

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 452 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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NAINABAN DIPAKBHAI NAGARSHETH

Versus

STATE OF GUJARAT

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Appearance:

MR PK PAREKH for Petitioner

MR BY MANKAD, APP for Respondent No. 1

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CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 01/09/1999

ORAL JUDGEMENT

Rule. Mr. BY Mankad, learned APP appears and waives service of Rule for the State. With the consent of learned counsel for the parties, matter is taken up for final hearing today.

It has been submitted by learned counsel Mr. Parkekh for the petitioner that the car of the petitioner (orig.complainant) was stolen and thereafter same was traced out and apprehended by the police and seized the

same as a muddamal. It is not a matter of dispute that vehicle viz. maruti fronti bearing Registration No. GJ-1-K-3793 is owned by the present petitioner and relevant record including RC Books etc. is in her name. After car was apprehended by the police, the petitioner approached the learned Metropolitan Magistrate, Court No.11, Ahmedabad with a prayer that possession of car be handed over to her. Considering the positive report submitted by the investigating agency, the learned Magistrate, vide his order No. 301/98 dated 19.3.1998 returned the said car to the petitioner on petitioner executing a Bond of Rs. 1,70,000/ with a further condition that until final disposal of the case, the petitioner shall not sell, gift or otherwise transfer or alienate the said car. On compliance of the order passed by the learned Magistrate, the car in question was handed over to the petitioner.

It has been further submitted by learned counsel Mr. Parekh appearing for the petitioner that thereafter since the petitioner was in need of money, she submitted an application on 27.7.1999 before the learned Metropolitan Magistrate, Court NO.11, Ahmedabad with a prayer to permit her to sell the said car. However, learned Magistrate, vide his order dated 6.8.1999, rejected said application. Against the impugned order of dismissal of application dated 27.7.1999, the petitioner has preferred present Cri. Revision Application.

It has been argued by the learned counsel Mr. Parekh for the petitioner that there is no dispute that the petitioner is the owner of the car in question and said fact is crystal clear from the relevant record. He has further submitted that though admittedly the petitioner was the owner of the car, learned Magistrate imposed unwarranted condition not to sell, gift or transfer the said car till the final disposal of the case. He has further submitted that petitioner is in need of money and as she has already executed a Bond of Rs. 1,70,000/, the aforesaid condition not to sell the car etc. should be removed and petitioner may be permitted to sell the car.

A pointed query was raised as to whether accused is likely to claim ownership/ possession of the car in question as the police recovered the same from his custody, learned counsel appearing for the petitioner, obviously replied the same in negative. He further submitted that even according to the investigating agency, the thief who had stolen the car of the petitioner, is a habitual offender and is involved in number of similar type of cases and that petitioner is one of the victims of the crime committed by him.

Learned APP Mr. Mankad has also fairly submitted

that he has been instructed by the investigating agency that there is no scope of claiming ownership/possession of the car in question from the accused. He has also fairly conceded that considering the registration papers, car in question ought to have been handed over by the learned Magistrate without putting an embargo not to sell the car.

Under these circumstances, in my view, the a condition not to sell, transfer, gift or alienate the car to any one pending the trial imposed by the learned Magistrate was not warranted more particularly when the petitioner has executed a Bond of Rs.1,70,000/-. Car is a valuable movable property and when there is no dispute as to the ownership about the said car, said condition imposed requires to be removed.

For the reasons aforesaid, Cri. Revision Application is allowed. The impugned order passed by the learned Metropolitan Magistrate, Court No.11, Ahmedabad dated 6.8.1999 is hereby quashed and set aside. The condition imposed by the learned Metropolitan Magistrate, Court NO.11, Ahmedabad vide his order No. 301/98 dated 9.3.1998 not to sell, gift, transfer or alienate the car till final disposal of the trial, is hereby deleted. The petitioner is permitted to sell or dispose of the car in question in the manner which she deems it think and proper.

Rule is made absolute. No order as to costs.

01.09.1999 [ C.K. BUCH, J ]

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